

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF ALABAMA

GOFF GROUP, INC., <i>et al.</i> ,)	
)	
Plaintiffs,)	
v.)	Case No. 02:06-cv-00389
)	
PHOENIX-DURANGO, L.L.C. , <i>et al.</i>)	
)	
Defendants.)	

**MOTION FOR REMAND OF PROCEEDINGS TO BANKRUPTCY COURT AND
RESPONSE TO SHOW CAUSE ORDER REGARDING REMAND TO STATE COURT**

Comes Now Susan Shirock DePaola, Trustee of the Bankruptcy Estate of the Goff Group, Inc., by her attorneys, Leonard N. Math and Chambless Math ❖ Carr, P.C. and moves this Court for referral of these proceedings to the United States Bankruptcy Court for the Middle District of Alabama and in support thereof states as follows:

1. On April 28, 2006, this matter was removed to this Court from the Circuit Court for Montgomery County, Alabama. This action seeks recovery on behalf of the Goff Group, Inc. and John W. Goff, individually, against Defendant Phoenix-Durango, L.L.C. and its individual members for alleged wrongful conduct in the acquisition and attempted enforcement of a mortgage against real estate located at 80 Technacenter Dr., Montgomery, Alabama. On May 25, 2006, the Defendants filed an Amended Answer and Counterclaim against the Plaintiffs Goff Group, Inc. and John W. Goff.

2. On June 9, 2006, the Defendant, Goff Group, Inc. filed for relief under Chapter 7, Title 11 of the United States Code (hereinafter the "Bankruptcy Code") in the United States Bankruptcy Court for the Middle District of Alabama, Case No. 06-30676. On June 12, 2006, the Court appointed Susan Shirock DePaola as the Chapter 7 Trustee in the case.

3. Pursuant to 11 U.S.C. § 157(a) and the General Order of Reference, this Court has referred cases under title 11 and proceedings arising under title 11 or arising in or related to a case under title 11 to the bankruptcy judges for the district. Pursuant to 28 U.S.C. § 157(b)(1), bankruptcy judges may hear and determine all cases under title 11 and all core proceedings arising under title 11, or arising in a case under title 11, referred under subsection (a) of this section, and may enter appropriate orders and judgments, subject to review by the district court under 28 U.S.C. § 158. Core proceedings under 28 U.S.C. 157(b)(2) include but are not limited to:

Allowance or disallowance of claims against the estate or exemptions from property of the estate;

Counterclaims by the estate against persons filing claims against the estate;

Proceedings to determine, avoid, or recover fraudulent conveyances;

Determinations of the validity, extent, or priority of liens;

Other proceedings affecting the liquidation of the assets of the estate or the adjustment of the debtor-creditor or the equity security holder relationship, except personal injury tort or wrongful death claims.

4. Pursuant to 28 U.S.C. § 157(c)(1), a bankruptcy judge may hear a proceeding that is not a core proceeding but that is otherwise related to a case under title 11. In such a proceeding, the bankruptcy judge submits his proposed findings of fact and conclusions of law to the district court, and any final order or judgment is entered by the district judge after considering the bankruptcy judge's proposed findings and conclusions and after reviewing de novo those matters to which any party has timely and specifically objected.

5. The claims asserted by the Plaintiff in this action against the Goff Group, Inc. are core proceedings as defined by 28 U.S.C. § 157(b)(2) or in the alternative, are non-core proceedings which are related to the bankruptcy proceedings of the Goff Group, Inc. which may be referred to the bankruptcy court pursuant to 28 U.S.C. 157(c). As such, these matters are more appropriately heard within the context of that bankruptcy proceedings.

6. On December 19, 2006, this Court entered an order to show cause why this matter should not be remanded to State Court based on an absence of diversity jurisdiction. Counsel for the Trustee submits that even absent diversity jurisdiction, that since this matter is either a core proceeding as defined by 28 U.S.C. § 157(b)(2) or a “related to” proceeding under 28 U.S.C. § 157(c)(1), referral of this matter to the Bankruptcy Court is a more appropriate disposition than remand to state court.

WHEREFORE, Susan Shirock DePaola prays for an order referring this case to the for final disposition to the United States Bankruptcy Court pursuant to 28 U.S.C. § 157(b), or in the alternative referring this matter for pre-trial and trial proceedings resulting in a report and recommendation to this Court for entry of final judgment pursuant to 11 U.S.C. § 157(c), along with such further and other relief as the Court may deem proper.

SUSAN SHIROCK DEPAOLA,
Trustee of the Bankruptcy Estate of Goff Group,
Inc.,

s/ Leonard N. Math
Attorney for the Susan Shirock DePaola, Trustee of
the Bankruptcy Estate of Goff Group, Inc.

CERTIFICATE OF SERVICE

The undersigned certifies that the foregoing instrument was served on all attorneys of record by electronic notice and/or by depositing a copy thereof in the United States mail postage prepaid as follows on this 28th day of December 2006:

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